

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

National DME, L.C.,

Plaintiff

v.

Tonya Katsikas,

Defendant

Case No. 2:23-cv-01243-CDS-NJK

**Order Granting Plaintiff's Rule 56(d)
Request, Denying Without Prejudice
Defendant's Motion to Dismiss or
Alternatively Summary Judgment, and
Denying Defendant's Motion for Sanctions**

[ECF Nos. 24, 25, 35]

This is a breach of contract action between plaintiff National DME, L.C. (NDME) and its former employee, defendant Tonya Katsikas. Katsikas moves for Rule 11 sanctions (ECF No. 24), and to dismiss the amended complaint, or in the alternative, for summary judgment (ECF No. 25). NDME seeks relief under Federal Rule of Civil Procedure 56(d). ECF No. 35. For the reasons set forth herein, the court declines to issue sanctions, denies without prejudice Katsikas' motion to dismiss the amended complaint, or in the alternative, motion for summary judgment, and grants NDME's Rule 56 request.

I. Background

NDME provides medical supplies and durable medical equipment to medical practices and hospital systems throughout the nation. ECF No. 13 at ¶ 5. It hired Katsikas in July of 2022, as its Las Vegas office sales representative, where she maintained, created, and developed goodwill with clients for NDME's benefit. *Id.* at ¶¶ 6, 8. In that position, Katsikas had access to and used confidential information concerning NDME's clients. *Id.* at ¶ 10.

In July of 2023, NDME terminated Katsikas. *Id.* at ¶ 12. NDME alleges that Katsikas communicated to its clients that (1) she was terminated, (2) she changed her employment to Precision Medical, and (3) NDME's services were inferior or that its charges were unreasonable. *Id.* at ¶ 14. NDME also claims that three of its longtime Las Vegas clients terminated their

1 business relationship with them as a result, and all indicated that they would do business with
2 Precision Medical instead of NDME. *Id.* at ¶ 15. In its amended complaint, NDME raises an
3 intentional interference with contractual relations claim and a breach of contract claim. *See*
4 *generally id.*

5 In January of 2024, Katsikas moved for Rule 11 sanctions. ECF No. 24. Katsikas also
6 moved to dismiss NDME's complaint, or in the alternative, for summary judgment. ECF No. 25.
7 Katsikas argues that dismissal is warranted under Rule 12(b)(6) and/or 12(b)(1). *Id.* at 5–12. In
8 the alternative, Katsikas argues that summary judgment is appropriate because “the first cause
9 of action for intentional interference with contractual relations is verifiably false and not
10 sufficiently specific” and that “the second cause of action for breach of contract is also verifiably
11 false” because it is only supported by conclusory statements and “dependent upon a disclosure
12 of confidential patient health information for which there was no breach[.]” *Id.* at 3. Katsikas
13 used witness declarations to negate NDME's claims. *See generally id.*

14 NDME opposes both dismissal and summary judgment, ECF No. 33, as well as opposes
15 sanctions (ECF No. 32). It also submitted a Rule 56 request. ECF No. 35.

16 II. Discussion

17 Katsikas styled her motion as a motion to dismiss or alternatively for summary judgment.
18 ECF No. 25. Katsikas filed third-party witness declarations in support of the majority of her
19 motion, claiming the declarations demonstrate that (1) NDME's intentional interference with
20 contractual relations claim fails because the third parties with whom she allegedly interfered all
21 swore under oath that she did not do so; (2) NDME's breach of contract claim fails because the
22 third parties to whom she is alleged to have disclosed “proprietary, confidential information”
23 have also sworn under oath that she did not do so; and (3) NDME's counsel did no investigation
24 into the specious allegations prior to filing the complaint or at any time since. *See generally id.*

1 The only portion of the motion that is not supported by materials outside of the
 2 pleadings is Katsikas' argument that NDME's intentional interference claim fails and should be
 3 dismissed under 12(b)(6). ECF No. at 6–7. I address this argument under the motion to dismiss
 4 standard. I construe the remainder of the motion as a motion for summary judgment because
 5 Katsikas submitted materials outside the pleadings in support of the motion. *See Hamilton*
 6 *Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1207 (9th Cir. 2007).

7 **A. Katsikas' motion to dismiss is denied.**

8 Katsikas argues that NDME's intentional interference with contractual relations claim is
 9 “verifiably false” and is not sufficiently specific under *Motogolf.com, LLC v. Top Shelf Golf, LLC*, 528
 10 F.Supp.3d 1168 (D. Nev. 2021).

11 ***1. Legal standard***

12 Under the Federal Rules of Civil Procedure, a district court must dismiss a complaint if it
 13 fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In considering
 14 a motion to dismiss, “all well-pleaded allegations of material fact are taken as true and construed
 15 in a light most favorable to the non-moving party.” *Wyer Summit P'ship v. Turner Broad. Sys., Inc.*, 135
 16 F.3d 658, 661 (9th Cir. 1998). However, legal conclusions are not awarded this same
 17 presumption just because they are cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*,
 18 550 U.S. 544, 555 (2007). A plaintiff must make sufficient factual allegations to establish a
 19 plausible entitlement to relief. *Id.* at 556. And if I grant a motion to dismiss, I should grant leave
 20 to amend even if no request to amend is made unless I determine that the pleading could not
 21 possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
 22 2000).

23 ***2. The complaint adequately states a claim upon which relief can be***
 24 ***granted.***

25 To establish a claim for intentional interference with contractual relations in Nevada, a
 26 plaintiff must allege facts demonstrating “(1) a valid and existing contract; (2) the defendant's

1 knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual
 2 relationship; (4) actual disruption of the contract; and (5) resulting damage.” *J.J. Indus., LLC v.*
 3 *Bennett*, 119 Nev. 269, 71 P.3d 1264, 1267 (2003). A plaintiff must “demonstrate that the defendant
 4 intended to induce the other party to breach the contract with the plaintiff.” *Id.* at 1268.

5 Katsikas argues that NDME’s intentional interference with contractual relations claim
 6 should be dismissed because NDME failed to provide specific details regarding its belief that she
 7 interfered with unidentified contracts by “communicat[ing] to National DME’s clients that she
 8 was terminated ... that National DME’s services were inferior or its charges were unreasonable”
 9 and that “she encouraged National DME’s clients to terminate their contracts with National
 10 DME.” ECF No. 25 R 6–7. But, in viewing the alleged facts as true in the light most favorable to
 11 NDME, it satisfied its burden at this stage.

12 In its complaint, NDME alleges (1) there was a valid and existing contract between
 13 NDME and its clients (2) that Katsikas was aware of and (3) intentionally interfered with by
 14 encouraging clients to cease doing business with NDME, (4) causing the clients to cease doing
 15 business with NDME (5) resulting in damage. ECF No. 13 at 17–27. Thus, NDME established
 16 their burden at this stage. I therefore deny Katsikas’ motion to dismiss claim one.

17 **B. NDME’s Rule 56(d) request is granted.**

18 Because Katsikas moved for summary judgment prior to discovery, NDME asks the court
 19 to deny or defer Katsikas’ motion, pursuant to Rule 56(d), because it has been unable to take
 20 depositions that would enable it to oppose the motion. ECF No. 35. Rule 56(d) is a vehicle for
 21 litigants to avoid summary judgment when a party moves for summary judgment before the
 22 opposing party has had a “realistic opportunity” to pursue discovery. *Burlington N. Santa Fe R. Co. v.*
 23 *Assiniboine & Sioux Tribes of Fort Peck Rsrv.*, 323 F.3d 767, 774 (9th Cir. 2003). To prevail on a Rule
 24 56(d) request, “[t]he requesting party must show: (1) it has set forth in affidavit form the
 25 specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3) the
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1 sought-after facts are essential to oppose summary judgment.” *Fam. Home & Fin. Ctr., Inc. v. Fed.*
2 *Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008); *California ex rel. California Dep’t of Toxic*
3 *Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998) (stating standard under former
4 Rule 56(f)).

5 Katsikas argues that the relevance of discovery would be “questionable at best” and
6 argues that her “reasonably diligent investigation has revealed that the clinic employees in
7 charge of these contracts have all affirmatively declared under oath that [NDME]’s allegations
8 are ‘not true.’” ECF No. 36 at 4. To support this claim, she cites *Guzman-Ruiz v. Hernandez-Colon*.
9 406 F.3d 31 (1st Cir. 2005). In this case, the First Circuit found that the district court did not
10 abuse its discretion in refusing to consider and grant a belated discovery request because no
11 diligence was exercised during the three months *after* the motion for summary judgment
12 surfaced. However, in contrast here, Katsikas filed her motion on January 2, 2024, and NDME
13 filed its opposition to summary judgment on January 4, 2024, and then its Rule 56(d) request on
14 January 10, 2024. *See* ECF Nos. 25, 33, 35. Both of NDME’s filings are timely unlike the belated
15 request in *Guzman-Ruiz*.

16 Furthermore, NDME provided specific examples of the discovery it seeks to obtain and
17 explains how that evidence will enable it to oppose summary judgment. *See generally* ECF No. 35.
18 NDME avers that it will depose employees of the five Las Vegas clinics to allow it to “confirm
19 that it was not a coincidence” that three of the five clinics terminated their contracts within
20 one-week of Katsikas’ termination. ECF No. 35 at 2, 7. The employees to be deposed have been
21 identified by first name, and NDME avers that it needs to serve subpoenas to obtain witness last
22 names. *Id.* at 7. NDME states that “even if one of the deponents testifies as expected, it would
23 preclude summary judgment.” *Id.* Accordingly, NDME has satisfied the requirements of Rule
24 56(d).

1 I therefore grant NDME's 56(d) request and deny Katsikas' motion for summary
2 judgment without prejudice as premature. No summary judgment motions shall be brought in
3 this matter until the end of the discovery period without leave of court. Katsikas may refile her
4 motion after the close of discovery or she may file a new motion.

5 **C. Katsikas's motion for Rule 11 sanctions is denied.**

6 Katsikas requests sanctions pursuant to Rule 11 because the complaint is "premised upon
7 demonstrably false allegations." ECF No. 24 at 2. "Rule 11 is an extraordinary remedy, one to be
8 exercised with extreme caution..." and only in "rare and exceptional" cases. *Operating Engineers*
9 *Pension Tr. v. A-C Co.*, 859 F.2d 1336, 1344-45 (9th Cir. 1988). Katsikas has not persuaded the court
10 that any sanctionable conduct has occurred and the court declines to impose Rule 11 sanctions
11 at this stage. The court does not yet know if the complaint is based on "false allegations" as
12 discovery has yet to occur. Therefore, Katsikas' motion for sanctions is denied.

13 **III. Conclusion**

14 IT IS HEREBY ORDERED that:

- 15 1. Katsikas' motion to dismiss, or in the alternative, motion for summary judgment
16 [ECF No. 25] is DENIED without prejudice.
- 17 2. National DMT's Rule 56(d) motion [ECF No. 35] is GRANTED.
- 18 3. Katsikas' motion for sanctions [ECF No. 24] is DENIED.

19 Dated: February 6, 2024

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22 Cristina D. Silva
23 United States District Judge
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